

Supreme Court of Kentucky

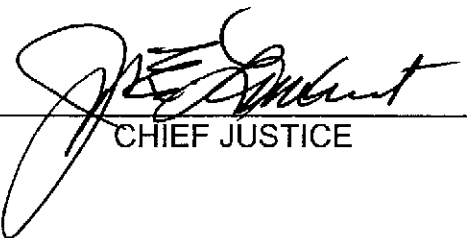
ORDER

IN RE: **ORDER APPROVING AMENDMENTS TO THE LOCAL RULES OF
PRACTICE FOR THE 3rd JUDICIAL CIRCUIT, CHRISTIAN CIRCUIT
COURT**

Upon recommendation of the Judge of the 3RD Judicial Circuit, Christian Circuit Court, and being otherwise sufficiently advised,

The amendments to the Local Rules of practice for the Christian Circuit Court are hereby approved. This order shall be effective as of the date of this Order, and shall remain in effect until further orders of this court.

Entered this the 20 day of April, 2007.



CHIEF JUSTICE

REVISED RULES OF PRACTICE OF THE CHRISTIAN CIRCUIT COURT

RULE 1 - CITATION OF RULES

These Rules may be cited as "RCCC" or "Rules of Christian Circuit Court."

RULE 2 - ORGANIZATION OF CHRISTIAN CIRCUIT COURT

- A. The Christian Circuit Court shall be composed of a Criminal Branch and a Civil Branch. The Criminal Branch shall have exclusive jurisdiction of all criminal cases, and the Civil Branch shall have jurisdiction of all other cases within the jurisdiction of the Circuit Court.
- B. The Christian Circuit Court is a court of continuous session, and the Court shall consist of two numbered divisions, namely:
 - Division I
 - Division II
- C. The Judges of each of the Divisions shall hear cases in both the Criminal Branch and the Civil Branch of the Court. The cases in the Criminal Branch and the cases in the Civil Branch of the Court shall be divided between the two divisions as nearly equally as possible as hereinafter provided by theses Rules.
- D. Each Judge of a Division may preside and hear and determine any case or question in the other Division when the Judge of that Division is sick, or absent from the county, or is not available.
- E. After a case has been assigned to a Division, the Judge thereof may for any reason transfer it to the other Division. Upon such transfer being made, the Clerk will make a proper endorsement upon the Rule Docket and the record.
- F. When two or more actions have been filed that may as a matter of right or may, in the discretion of the Court, be consolidated and such actions are pending in different Divisions of the Court, any party to any of the actions may have any of the actions transferred to that Division of the Court in which the first of the

actions was filed. The Judge of the Court may order such transfers to be made without a motion by any of the parties.

RULE 3 - MOTION DAYS

Motion Days, commonly known as "Rule Days", shall be held by Division I on the first and third Wednesdays of each month and on the second and fourth Wednesdays in Division II. When Wednesday falls on a holiday, Motion Day will be rescheduled or cancelled at the discretion of the Presiding Judge. Motions will be set for a time certain and attorneys should arrange to be present promptly at the time set. Times for Motions may be obtained by contacting the Civil Division in the office of the Christian Circuit Court Clerk, P. O. Box 635, Hopkinsville, Kentucky 42241-0635, or by calling 270-887-2539.

Parties are requested to obtain a special day for a hearing which would be expected to take more than approximately Fifteen (15) minutes. Contact the Civil Division of the Circuit Clerk's Office, as set out above, to arrange a time and date for an extended hearing.

Motions shall be filed and served at least seven days prior to the hearing date and responses, if any, should be filed and served at least two (2) days prior to same, but these time limits may be waived by the Court *only* for good cause or in the interests of justice.

Leave of Court shall be obtained to withdraw as counsel after an entry of appearance has been made. Such leave can only be obtained by a motion served on the client and other parties and properly noticed for hearing. Substitution of counsel may be accomplished by a notice signed by the withdrawing counsel and the entering counsel.

Attorneys are expected to appear at motions properly noticed or may subject themselves and their clients to sanction.

RULE 4 - CONTINUED MOTIONS

An attorney who will be unable to be present at the time set for a motion shall immediately contact the moving attorney and attempt to establish a mutually agreeable time for the hearing of the motion. Should this prove unsuccessful, the party desiring the continuance shall immediately file a motion for a continuance in writing, stating the reasons for the continuance, and shall send a copy directed to the attention of the Judge as well as filing it with the Clerk.

RULE 5 - MOTIONS UNDER CR 78(2)

A movant may bring his motion under the provisions of CR 78(2) which makes provision for the determination of motions without oral hearings upon brief written statements of reasons in support and opposition.

The movant shall give notice that the motion is made under CR 78 (2) and shall direct the attention of the opposing attorney (or party if there is no attorney) to the fact that under this local rule the motion may be granted routinely by the Court ten days after filing unless a response is filed. The notice shall be substantially in the following in the following form:

The foregoing motion is submitted to the court for decision pursuant to CR 78 (2). This motion will routinely be granted by the court in ten days unless a response is filed.

Should the party opposing the motion under Rule CR 78(2) wish to have an oral hearing on the question, he may in his response so state. After checking with the Clerk's office, as outlined above, that party shall proceed to set the motion for a Rule Day at a given time.

Motions should be filed under either CR 78 (2) or noticed as set out above at RCCC 3. Motions which are not filed under one or the other of these provisions may be considered defective or nugatory and void.

A Motion to set a case for trial shall not be brought under CR 78(2).

Orders for Motions filed in this method shall not be tendered until after ten days have expired.

COMMENT: It is believed that this Rule will simplify things for attorneys who are making fairly routine motions, such as to amend a complaint or to bring in a third party defendant, which motions are usually routinely granted. If the opposing party has any statement to make in opposition to the motion he has the choice of simply filing a written response and setting oral hearing, all as provided earlier in these rules.

The Court has found that a trial date can best be set if the attorneys are either personally present in court or have present a representative (often one of the other attorneys) who is familiar with their schedules. The Court, in consultation with the Clerk, can then best set a mutually convenient trial date.

RULE 6 - JURY TERMS

A jury term shall generally consist of four consecutive weeks. There will be ten four-week terms of the Christian Circuit Court beginning on the first Monday of January, February, March, April, May, June, August, September, October, and November. When any of said Mondays is a legal holiday, the term will commence on the following Tuesday.

A Grand Jury will be impaneled at the beginning of each term in January, March, May, July, September, and November. The Chief Judge, or at his direction, the other Judge of the Circuit Court will impanel the Grand Jury.

In Division I of Circuit Court, the first two weeks of each term shall be reserved for criminal cases. The second two weeks of each term shall be primarily for civil cases.

In Division II of Circuit Court, the first two weeks of each term shall be reserved for civil cases. The second two weeks of each term will be primarily for criminal cases.

Either court, however, may set criminal cases during the civil term and civil cases during the criminal term.

RULE 7 - ASSIGNMENT OF CIVIL CASES

The Clerk shall in the presence of at least one of the Judges of the Court prepare a set of fifty (50) cards. There shall be written on the back of one-half of said cards the words "Division I" and on the other half of said cards the words "Division II". The

cards shall then be thoroughly mixed or shuffled so that the sequence will be entirely by chance. The cards shall be placed in the container face down in such a manner that no one can see the number of the division on the card which will be drawn next.

Whenever a suit is commenced, the Clerk, in the presence of the attorney filing the complaint, or in his absence in the presence of another Clerk, shall remove the top card of the set and assign the case to the Division shown on that card, putting the card drawn in another closed compartment for subsequent re-use.

After all cards have been drawn the cards shall be reshuffled and again placed in the container for a repetition of the above process.

RULE 8 - ASSIGNMENT OF CRIMINAL CASES

Indictments shall be assigned to the Division of the court corresponding to the number of the indictment, with odd numbered indictments being assigned to Division I and even numbered indictments being assigned to Division II. Each Judge, however, shall be authorized, without the entry of any formal order, to conduct hearings concerning routine procedures on all indictments, including, for example, arraignments, hearing motions for bail and the accepting of guilty pleas. Each Judge may try a case assigned to the other Judge with the approval of the Judge to which the case was originally assigned.

Motions prior to trial shall ordinarily be assigned to the Judge to which the case is assigned, but, as mentioned above, the Judge of the other Court may hear same for the convenience of the parties and the Court. Motions for post conviction relief shall be filed with the Division which heard the case.

RULE 8A - CRIMINAL RULE DAYS

Each division of Christian Circuit court shall convene criminal motion hours on Wednesdays, as follows:

On the first Wednesday after the first Monday of each month, criminal motion hour shall be convened at 9:00 a.m. in Division Two, and on the third Wednesday after the first Monday of each month, as well.

On the second Wednesday after the first Monday of each month, criminal motion hour shall be convened at 9:00 a.m. in Division One, and on the fourth Wednesday after the first Monday of each month, as well.

On its assigned criminal rule days, a division may schedule matters for morning, afternoon, or both in its discretion. In months with five Wednesdays, Division One shall convene a criminal motion hour beginning at 9:00 a.m. on the fifth Wednesday and Division Two shall convene a criminal motion hour beginning at 1:00 p.m. on the fifth Wednesday.

If a criminal rule day falls on a holiday, it will be canceled or rescheduled in the Court's discretion.

The notice of a motion in a criminal case shall specify the date, time and place of the hearing and shall be filed with the Clerk before noon on the Wednesday preceding the motion day designated in the notice.

Any criminal matter, including but not limited to arraignments, guilty pleas, motions, sentencing hearings, probation revocations and motion hearings, may be scheduled for criminal rule day in the appropriate division.

Any motion docketed on which arguments need to be heard or evidence presented shall be passed to a hearing date or heard at the foot of the motion hour docket, in the Court's discretion.

RULE 8B - CRIMINAL DOCKET IN CIRCUIT COURT

Criminal cases shall be scheduled for trial as follows;

In Division One, beginning with the first Monday of each month, and continuing for two calendar weeks.

In Division Two, beginning with the third Monday of each month, and continuing for two calendar weeks.

During months with five Mondays, the Monday and Tuesday of that week shall be available to Division Two and Thursday and Friday of that week shall be available to Division One.

RULE 9 -SUBMISSION OF NON-JURY CASES FOR FINAL ADJUDICATION

It shall be the responsibility of the attorneys of record, or any party not represented by counsel, to file a notice of submission with the Clerk and with the Court at such time that the case, or an issue therein, has been completely briefed and all necessary evidence submitted, or the time for filing briefs and submitting evidence has elapsed, and the matter stands ready for a decision by the Court.

RULE 10 - PRE-TRIAL CONFERENCES IN CIVIL CASES

Pre-trial conferences will generally be held in all civil cases unless the Court feels this is unnecessary in a particular case.

Pre-trial conferences shall be attended by an attorney for each party who is fully familiar with the facts and who has the authority, if any, to settle the case, to compromise any issue involved, or to agree to certain stipulations of facts.

Instructions, witness lists and exhibit lists shall be submitted at the Pre-trial conference or at such earlier time as may be designated by the presiding judge. Copies of the proposed instructions, witness lists and exhibit lists shall be served on all parties.

RULE 11 - ENTRY OF ORDERS

Orders of the Court handed down either at a Rule Day or at some other time shall be entered upon the docket according to the following procedure.

In routine matters decided on a Rule Day, the Court may simply enter an appropriate order on the Court calendar for that day or designate on the calendar which attorney is to draw the order and generally what it is to contain.

Once an attorney has prepared an order he shall sign same "Tendered by" or "Prepared by" and submit it to the opposing attorney for his signature "Have seen". (By his signing the proposed order as "Tendered by" or "Prepared by" or "Have seen", neither attorney is agreeing that the order is necessarily proper, but is only agreeing that the order as drawn reflects the ruling of the Court). Should the responding attorney refuse or fail to sign the "Have seen" line, the attorney submitting the order may file it with the Clerk along with a notation that the opposing attorney has declined to sign

the order. In such event the Court may within three (3) days from the time of submission sign the order, unless the attorney who objects to the wording of the order files an objection thereto specifying his reasons therefore, or in the alternative submits a proposed order of his own. In that event the Court may contact the first attorney for his suggestions, or the Court may enter one of the orders as drafted or as modified by the Court or the Court may prepare an order of its own.

RULE 12 - MASTER COMMISSIONER PRACTICE

Rule 12.01 - References to Master Commissioner

References shall be made to the Master Commissioner as provided by the Rules of Civil Procedure, by the Kentucky Revised Statutes, by these Rules, or by Court order in individual cases. All motions seeking an order of reference to the Master Commissioner (including motions for Order of Sale) shall be served on the Master Commissioner pursuant to CR 5.02 as follows:

David E. Arvin
THOMAS & ARVIN
1209 South Virginia Street
P. O. Box 1051
Hopkinsville, Kentucky 42241-1051

Rule 12.02 - Orders of Sale

All orders of sale, including judgments containing orders of sale, shall be filed with the Master Commissioner for examination and approval prior to entry by the Court. Orders of Sale should contain a blank certificate similar to the certificate set out in Rule 15.03 of these Rules. The Master Commissioner shall examine all such orders and, following his approval, shall forward same to the Court for entry at the hearing on the parties motion seeking such order. An approval by the Master Commissioner is his certification that said order complies with the Kentucky Revised Statutes, the Rules of Civil Procedure, and with the Rules of the Christian Circuit Court.

1. Orders for the sale of property shall contain:
 - A. A complete caption setting forth the names of all parties to be bound by the judicial sale. Abbreviations such as "etc" or "et al" should not be used.

- B. A legal description of the property sought to be sold, together with the source of title of the present owner or owners.
- C. The address of the property sought to be sold or, if it is true, a recitation of the fact that the property has no address.
- D. The dollar amount of the judgment on a day certain, together with the daily amount of accruing interest (if the Order of Sale is for the purpose of enforcing a judgment for money).

2. Orders of sale may contain:

- A. Special conditions of sale, e.g., property to be sold on site; specific combinations of property containing multiple tracts; special advertising in addition to advertising accordance with CR 53.06. If a bond is required of the purchaser, the bond shall be filed along with the Commissioner's report of sale. Unless the Court otherwise directs in the Order of Sale, no bond shall be required of a purchasing creditor seeking to enforce its mortgage or lien on the property.

The Master Commissioner shall normally prepare the following documents in connection with any judicial sale: Sale notice for advertising and posting; Commissioners Report of Sale; Commissioner's Bill of Costs; Order of Confirmation; Order of Distribution; and Commissioner's Deed. When the facts of a particular case render it necessary or desirable that a party prepare any of these documents, the documents shall be filed with the Master Commissioner in the same way as Orders of Sale in Rule 12.02. All motions concerning any matter referred to the Master Commissioner shall be served on the Master Commissioner as if he were a party who has appeared in the action.

When property is purchased by a person not a party to the action, all subsequent motions and reports concerning confirmation of the sale (including objections to the Commissioner's Report) shall be served on the purchaser in accordance with the provisions of CR 5.02.

Rule 12.03 - Assignments

Any purchaser making an assignment of its bid to another entity shall file same with the Clerk of the Court, setting forth the nature of the assignment together with the

name and address of the assignee. All such assignments shall contain a certificate of service, in accordance with CR 5.03, showing that a copy has been sent to the Master Commissioner.

RULE 13 - JURY QUESTIONNAIRE

The contents of juror qualification forms shall be made available to the trial judge and to parties or their attorneys of record unless the Chief Circuit Judge or his designee determine in any instance in the interest of justice that this information shall be kept confidential or its use limited in whole or in part. The forms and the information contained therein shall remain confidential and shall not be disclosed to anyone except the party, the attorney of record, persons employed by the attorney of record to aid in jury selection, or court officials. The forms may be photocopied at the expense of the requesting party or attorney, but such copies are to be destroyed within a reasonable time following the jury term.

RULE 14 - LOCAL RULE ON MEDIATION CHRISTIAN CIRCUIT COURT HOPKINSVILLE, KENTUCKY

Rule A - Preamble and Scope

The Christian County Circuit Courts find that under some circumstances the process known as mediation may provide an efficient and cost-effective alternative to traditional litigation, and, further, that the wise and judicious use of mediation may benefit litigants.

Mediation is intended to help both litigants and the Courts facilitate the settlement of disputes. Litigants should participate in good faith and in an earnest attempt to resolve their differences.

This Rule refers to mediation. Nothing in this Rule shall prohibit parties from resolving disputes through other methods. However, in any case where one party may pose a risk of harm (such as domestic violence) to another party or family member, mediation should not be used.

Rule B - Mediation Defined

Mediation is an informal process in which a neutral third person(s) called a mediator facilitates the resolution of a dispute between two or more parties. The process is designed to help disputing parties reach an agreement on all or part of the issues in dispute. Decision-making authority remains with the parties, not the mediator. The mediator assists the parties in identifying issues, fostering joint problem-solving, and exploring settlement alternatives.

Rule C - Referral of Cases to Mediation

At any time on its own motion or on motion of any party, the Court may refer a case or portion of a case for mediation. In this decision, the court shall consider:

- A. The stage of the litigation, including the need for discovery, and the extent to which it has been conducted;
- B. The nature of the issues to be resolved;
- C. The value to the parties of confidentially, rapid resolution, or the promotion or maintenance of on-going relationship;
- D. The willingness of the parties to mutually resolve their dispute;
- E. Other attempts at dispute resolution; and
- F. The ability of the parties to participate in the mediation process including the ability of the parties to pay the cost of mediation.

Rule D - No Stay of Proceedings

Unless otherwise ordered by the Court, mediation shall not stay any other proceedings.

Rule E - Appointment of Mediator

Within fifteen (15) days of referral, the parties shall agree on a mediator or a mediation service. If the parties cannot agree, they shall notify the court, which will select a mediator or a mediation service.

Rule F - Mediator Compensation

The mediator shall be compensated at the rate agreed between the mediator and the parties if the mediator is chosen by agreement. If the mediator is appointed by the Court, the fee for the mediator shall be reasonable and no greater than the mediator's standard rate as a mediator and said fees shall be subject to court approval. Unless otherwise agreed by the parties or ordered by the Court, the parties shall equally divide the mediator's professional fees.

Rule G - Mediation Procedure

Following selection of the mediator, the mediator shall schedule an initial mediation conference within thirty (30) days thereafter or such other time as scheduled by the Court. The mediation conference shall be held in the county in which the case is pending or at a site agreed upon by the parties. The mediator may meet with the parties or their counsel prior to the mediation conference for the purpose of establishing a procedure for the mediation conference. The mediator may require the parties to submit a confidential statement of the case or other materials that the mediator may reasonably believe appropriate for efficiency conducting the mediation conference.

Rule H - Attendance at Mediation Conference

The parties must attend the mediation conference. Counsel shall attend the mediation conference unless otherwise agreed to by the parties and the mediator or ordered by the Court. If a party is a public entity, it shall appear by the physical presence of a representative with full authority to negotiate on behalf of the entity and to recommend settlement to the appropriate decision making body or officer of the entity. If a party is an organization other than a public entity, it shall appear by the physical presence of a representative, other than the party's counsel of record, who has full authority to settle without further consultation. If any party is insured for the claim in dispute, that party shall also be required to have its insurer(s) present by the physical presence of a representative of the insurance carrier(s) who is not that carrier's outside counsel; this representative must have full settlement authority. The foregoing requirements of attendance may be varied only by stipulation of the parties or by order of the Court for good cause shown.

Rule I - Completion or Termination of Mediation

The mediator may terminate the mediation conference after a settlement is reached or when the mediator determines that continuation of the process would be unproductive. After the initial mediation conference, mediation shall continue only by the agreement of the parties, their counsel and the mediator, or by order of the Court.

Rule J - Report to the Court

The mediator shall report to the court that the mediation has not occurred, has not been completed, or that the mediation has been completed with or without an agreement on any or all issues. With the consent of the parties, the mediator may also identify those matters which, if resolved or completed, would facilitate the possibility of a settlement.

Rule K - Agreement

If an agreement is reached during the mediation conference, it shall be reduced to writing and signed by the parties. The parties shall be responsible for the drafting of the agreement, although the mediator may assist in the drafting of the agreement with the consent of the parties.

Rule L - Confidentiality

- A. Mediation sessions shall be closed to all persons other than the parties, their legal representatives, and other persons invited by the mediator with the consent of the parties.
- B. Mediation shall be regarded as settlement negotiations for purposes of K.R.E. 408.
- C. Mediators shall not be subject to process requiring the disclosure of any matter discussed during the mediation, but rather, such matters shall be considered confidential and privileged in nature except on order of the Court for good cause shown. This privilege and immunity reside in the mediator and may not be waived by the parties.
- D. Nothing in this rule shall prohibit the mediator from reporting abuse according to KRS 209.030, KRS 620.030, or other applicable law.

RULE 15 - EFFECT ON PRIOR LOCAL RULES

Prior local rules heretofore adopted by the Court are deemed superseded by these rules.

RULE 16 - APPLICABILITY OF RULES OF CIVIL PROCEDURE

In cases not covered by these rules consult the Kentucky Rules of Civil Procedure.

Revised this 24 day of October, 2006.



HON. EDWIN M. WHITE
JUDGE, CHRISTIAN CIRCUIT COURT, DIV. I



HON. JOHN L. ATKINS
JUDGE, CHRISTIAN CIRCUIT COURT, DIV. II